



Texas Public Information Act 101

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Views expressed are those of the presenter, do not constitute legal advice and are not official opinions of the Office of the Texas Attorney General

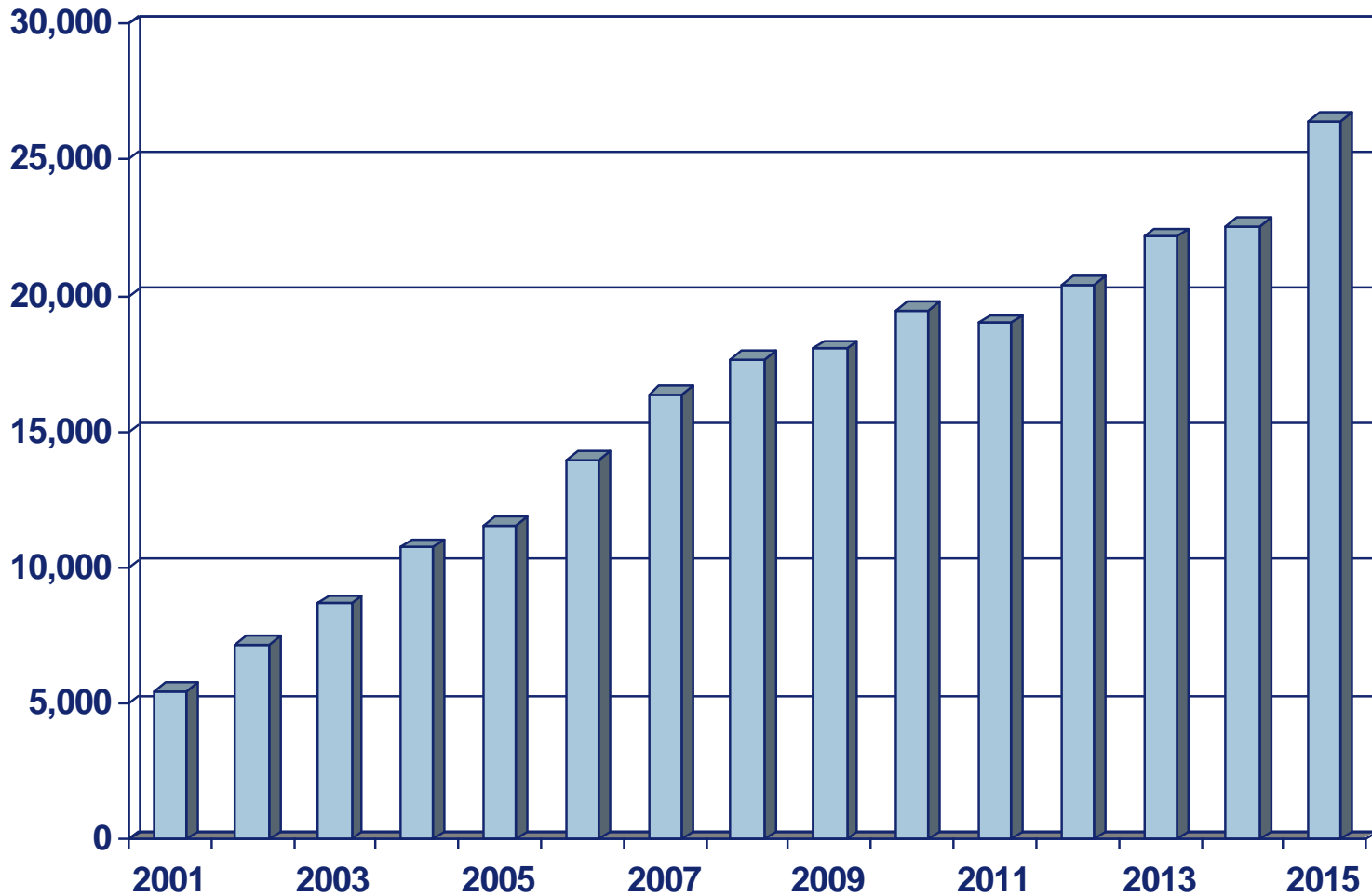


Elements of Training

- ▶ Background of the legal requirements for open records and public information
- ▶ Applicability of the Public Information Act
- ▶ Procedures and requirements regarding complying with a public information request
- ▶ The role of the Attorney General under the Public Information Act
- ▶ Penalties and other consequences for failure to comply with the Public Information Act



Open Records Letter Rulings Issued in Fiscal Years 2001-2015





Texas Government Code Chapter 552

Section 552.001. Policy; Construction

- (a) Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle that government is the servant and not the master of the people, ***it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees . . .*** The provisions of this chapter shall be liberally construed to implement this policy.
- (b) ***This chapter shall be liberally construed in favor of granting a request for information.***



Public Information Defined (Slide 1 of 3)

Gov't Code § 552.002(a)

- ▶ “Public Information” means information that is written, produced, collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business:
 - 1) by a governmental body;
 - 2) for a governmental body and the governmental body owns the information, has a right of access to it, or spends or contributes public money for the purpose of writing, producing, collecting, assembling, or maintaining the information; or
 - 3) by an individual officer or employee of a governmental body in the officer’s or employee’s official capacity and the information pertains to official business of the governmental body.



Public Information Defined (Slide 2 of 3)

Gov't Code § 552.002(a-1), (a-2)

- ▶ Information is in connection with the transaction of official business if the information is created by, transmitted to, received by, or maintained by an officer or employee of the governmental body in the officer's or employee's official capacity, or a person or entity performing official business or a governmental function on behalf of a governmental body, and pertains to official business of the governmental body.
- ▶ The definition of "public information" provided by Subsection (a) applies to and includes *any electronic communication* created, transmitted, received, or maintained *on any device* if the communication is in connection with the transaction of official business.



Public Information Defined (Slide 3 of 3)

Gov't Code § 552.003(2-a)

- ▶ “Official business” means any matter over which a governmental body has any authority, administrative duties, or advisory duties.



Forms of Public Information

Gov't Code § 552.002(b)-(c)

- ▶ Information recorded on physical media:
 - Paper, film, or tape
 - Magnetic, optical, or solid state storage

- ▶ And in any form:
 - Audio or video recordings
 - Photographs
 - Maps
 - Drawings
 - Emails, Internet postings, text messages, instant messages, or other electronic communications



Governmental Body Defined

Gov't Code § 552.003

- ▶ The definition of “governmental body” encompasses all public entities supported in whole or in part by public funds, including:
 - State agencies
 - Cities and counties
 - Public school districts and school boards
 - Utility districts
 - Police departments and sheriffs' offices
 - Public universities
 - County commissioners courts
 - Municipal governing bodies
 - Local workforce development boards
 - **Does not include the judiciary**



What is a Public Information Request?

- ▶ Must be in writing to trigger the PIA
- ▶ Must ask for information in existence as of the date the request was received
 - No requirement to create new documents
 - No requirement to answer questions
 - No requirement to perform legal research
- ▶ No “magic words” required
- ▶ No requirement to label it as an open records request or public information request
- ▶ Can be typed or handwritten
- ▶ Cannot require the use of a specific form to submit request



What if the Request is Unclear or Unduly Broad?

Gov't Code § 552.222

- ▶ **Cannot ask** requestors why they want the information
- ▶ Can ask requestor to clarify request and/or discuss with requestor how scope of request might be narrowed
- ▶ When a governmental body, acting in good faith, requests clarification or narrowing of an unclear or over-broad request, the 10-business-day period to request an Attorney General decision is measured from the date the request is clarified or narrowed.
 - *City of Dallas v. Abbott*, 304 S.W. 3d 380, 387 (Tex. 2010)



Sample Requests



What if the Request Asked For... (Slide 1 of 6)

. . . John Smith's personnel file pursuant to the U.S. Freedom of Information Act, the First Amendment of the U.S. Constitution and open records laws of the European Union.



What if the Request Asked For... (Slide 2 of 6)

I want all
records involved in
Report # 225436-96.

Bob Scrawf
P.O. Box 22
Hidden, TX 70000



What if the Request Asked For... (Slide 3 of 6)

**. . . “any and all documents
pertaining to Jane Smith,
including, but not limited to,
communications sent or
received by her in the past five
years.”**



What if the Request Asked for... (Slide 4 of 6)

**. . . “any and all communications
Jane Smith sends or receives
over the next 30 days starting
tomorrow.”**



What if the Request Asked For... (Slide 5 of 6)

. . . “all of Jane Smith’s evaluations because I am considering going into business with her and would like to know about her personal background.”



What if the Request Asked For... (Slide 6 of 6)

. . . “How do you determine whether to file an appeal? What are the legal requirements to appeal a court’s ruling? Also, do you think I should appeal my case?”



Emails and Faxes

Gov't Code § 552.301(c)

- ▶ A governmental body (GB) may designate a person who is authorized to receive requests by email or fax.
- ▶ If the GB makes such a designation, the PIA is triggered only if the email or fax request is directed to the designated person.
- ▶ Written requests that are not sent by email or fax do not have to be directed to any specific employee or officer of the GB.



How Do Requestors Know

Gov't Code § 552.221

- ▶ Requires a governmental body to post a sign containing:
 - The rights of requestors
 - The responsibilities of governmental bodies
 - Procedures for inspecting and obtaining a copy of information



What Do You Do When You Receive a Request?

Gov't Code § § 552.221, 552.301

- ▶ A governmental body must:
 - Promptly produce information for inspection, duplication or both;
- or
- Ask for a decision from the Attorney General about whether the information is excepted from disclosure, unless there has been a previous determination that the information is excepted.



How Much Time Do You Have to Produce Information?

Gov't Code § 552.221

- ▶ “Promptly” means as soon as possible under the circumstances, that is, within a reasonable time, without delay.
- ▶ If you cannot produce information within 10 business days after the date the information is requested, you must certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available.



How Much Time Do You Have to Request a Decision from the Attorney General?

Gov't Code § 552.301(a)-(b)

- ▶ If you wish to withhold information from the requestor, you must request a decision from the OAG not later than 10th business day after the date of receiving the public information request.
- ▶ You must request a decision within 10 business days, unless you have a “previous determination.”



What is a “Previous Determination”?

Open Records Decision No. 673 (2001)

▶ Type 1

- Most common
- Applicable to only a particular governmental body
- Applicable only to specific information or records
- Applies when the information previously ruled upon is requested again

▶ Type 2

- May be applicable to:
 - All governmental bodies
 - All governmental bodies of a certain type
 - Only a particular governmental body
- Applicable to a precise, clearly delineated category of information or records
- Language of ruling or decision will state it is a previous determination



ORD 684

- ▶ Open Records Decision No. 684 (2009) covers several types of information:
 - Direct deposit authorization forms
 - Form I-9 and attachments
 - W-2 and W-4 forms
 - Certified agenda and tape of closed meeting
 - Fingerprints
 - L-2 and L-3 declarations
 - Certain email addresses
 - Military discharge records



Procedures for Requesting a Decision from the OAG (Slide 1 of 3)

Gov't Code § § 552.301, 552.305

- ▶ **Not later than the 10th business day, you must:**
 - Ask the OAG for a ruling and state the exceptions that apply;
 - Notify the requestor in writing that you have asked for a ruling;
 - Provide the requestor a copy of your letter to the OAG requesting a ruling; and
 - Notify any third parties with proprietary interests in the requested information that they may submit written comments to the OAG stating why the information should be withheld (third party notice must be in the form prescribed by the OAG).



Procedures for Requesting a Decision from the OAG (Slide 2 of 3)

Gov't Code § 552.301(e)-(e-1)

- ▶ **Not later than the 15th business day, you must:**
 - Submit written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld.
 - Submit a copy of the written request for information.
 - Submit a signed statement as to the date on which the request for information was received by the GB or evidence sufficient to establish that date.



Procedures for Requesting a Decision from the OAG (Slide 3 of 3)

Gov't Code § 552.301(e)-(e-1) (continued)

- ▶ **Not later than the 15th business day, you must:**
 - Submit a copy (not your original) of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested.
 - Label that copy of the specific information, or representative samples, to indicate which exceptions apply to which parts of the copy.
 - Send a copy of your written comments to the requestor.



Counting Business Days

General Rules for Counting Business Days

- ▶ Start counting the next business day after receiving a written request.
- ▶ “Received” means when it is physically received, not when it is finally opened or read (this includes email).
- ▶ Saturdays, Sundays and holidays do not count.
- ▶ Skeleton crew days and days the GB is closed do not count, but make sure you notify the OAG of such days in writing if you are requesting a decision.



Counting to 10 Can Be Simple

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2 Written Request Received	3 1	4 2	5 3	6 4	7
8	9 5	10 6	11 7	12 8	13 9	14
15	16 10	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				



Counting to 10 Can Be Tricky

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18 Written Request Received	19 1	20 2	21
22	23 3	24 State Closed Christmas Eve	25 State Closed Christmas Day	26 State Closed Day After Christmas	27 Skeleton Crew Day	28
29	30 4	31 Half Skeleton/ Half Holiday	1 State Closed New Year's Day	2 5	3 6	4
5	6 7	7 8	8 9	9 10	10	11



PIA Electronic Filing System

<https://apps2.portal.texas.gov/OAGPIAeFiling/>



Texas Attorney General

Public Information Act Electronic Filing System



Welcome

Welcome to the Office of the Attorney General's Public Information Act Electronic Filing System. The OAG uses this system to accept a governmental body's request for an attorney general open records decision under the Public Information Act, Texas Government Code Chapter 552. Interested parties can also use this system to submit comments or materials for review by the OAG during the open records decision process.

Please Note: This system cannot be used to request public information from the OAG or any other governmental body. Requests for public information must be submitted directly to the governmental body from whom you are seeking information.

You can use this service to:

- Request an attorney general open records decision and submit new material for review; or
- Submit supplemental documents or comments related to an existing request for decision.

Information You Need:

- Name of Governmental Body or Interested Party
- Governmental Body PIC ID (This is the internal tracking number assigned to a public information request by a governmental body. This is not the ID number assigned by Texas.gov. Third parties should contact the Governmental Body for this number or use the name of the Governmental Body for this data field.)
- Texas.gov Request ID (if you are submitting additional material to an existing request)
- Credit card (Visa, MasterCard, Discover, or American Express) or Electronic Check information
- Microsoft® Silverlight® Plugin (This software is not required; however, it makes it easier to upload multiple files.) If you don't have Silverlight, you can install it now.



Consequences for Missing Deadlines (Slide 1 of 2)

- ▶ Mandatory exceptions are not waived.
- ▶ Permissive exceptions are waived.
- ▶ Refer to the Public Information Act Handbook for a discussion of mandatory and permissive exceptions.



Consequences for Missing Deadlines (Slide 2 of 2)

- ▶ Some examples of ways to waive **permissive** exceptions:
 - Fail to request a ruling by 10 business day deadline;
 - Fail to raise all applicable exceptions by 10-business-day deadline (i.e., new exceptions raised later are waived);
 - Fail to notify requestor, within 10 business days, that you are requesting a ruling;
 - Fail to submit information or representative sample within 15-business-day deadline;
 - Fail to submit arguments within 15-business-day deadline; or
 - Fail to submit copy of request within 15-business-day deadline.



Exceptions to Disclosure (Slide 1 of 2)

Common Exceptions

- ▶ **552.101** Information Confidential by Law
- ▶ **552.102** Confidentiality of Certain Personnel Information
- ▶ **552.103** Information Related to Litigation
- ▶ **552.104** Information Related to Competition or Bidding
- ▶ **552.107** Certain Legal Matters (Attorney-Client Privilege)
- ▶ **552.108** Certain Law Enforcement Records
- ▶ **552.110** Confidentiality of Trade Secrets, Commercial or Financial Information



Exceptions to Disclosure (Slide 2 of 2)

Common Exceptions

- ▶ **552.111** Agency Memoranda (Attorney Work Product)
- ▶ **552.116** Audit Working Papers
- ▶ **552.117** Confidentiality of Certain Employee Information
- ▶ **552.130** Confidentiality of Certain Motor Vehicle Records
- ▶ **552.136** Confidentiality of Credit Card, Debit Card, Charge Card, and Access Device Numbers
- ▶ **552.137** Confidentiality of Certain E-Mail Addresses
- ▶ **552.147** Social Security Numbers



“Core” Public Information (Slide 1 of 2)

Gov’t Code § 552.022(a)

- ▶ Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:



“Core” Public Information (Slide 2 of 2)

Gov’t Code § 552.022 (a)

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a GB, except as provided by Section 552.108;
- (2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a GB;
- (3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a GB;
- (5) all working papers, research material, and information used to estimate the need for or expenditure of public funds or taxes by a GB, on completion of the estimate;
- (16) information that is in a bill for attorney’s fees and that is not privileged under the attorney-client privilege;
- (17) information that is also contained in a public court record; and
- (18) a settlement agreement to which a GB is a party.



When Can You Redact Without First Seeking a Ruling?

- ▶ If you want to withhold information from the public, you must request a ruling from the Attorney General's Office.
- ▶ Withholding information without requesting a ruling
 - Gov't Code § 552.130
 - Information related to driver's license, motor vehicle title or registration, or personal identification document
 - Gov't Code § 552.136
 - Credit card, debit card and access device numbers
 - Gov't Code §§ 552.024, 552.1175 and 552.138
 - Personal information of certain public employees



Open Records Division Forms

<https://www.texasattorneygeneral.gov/og/redacting-public-information-rules-and-forms>

OPEN GOVERNMENT / OPEN RECORDS DIVISION / REDACTING PUBLIC INFORMATION RULES AND FORMS



OPEN RECORDS DIVISION

ORDS: OVERRULED, MODIFIED, AFFIRMED,
WITHDRAWN

OPEN RECORDS QUESTIONS (ORQS)

OPEN RECORDS MEMORANDUM RULINGS

LIST OF PREVIOUS DETERMINATIONS BY
GOVERNMENTAL BODY

PUBLIC INFORMATION COST ESTIMATE
MODEL

REDACTING PUBLIC INFORMATION RULES AND FORMS

AMENDMENTS TO THE PUBLIC
INFORMATION ACT: 2013 TEXAS
LEGISLATIVE SESSION

OPEN GOVERNMENT RESOURCES

OPEN GOVERNMENT CONFERENCES

EFILING

FAQ OPEN GOVERNMENT TRAINING

QUESTIONS REGARDING OPEN RECORDS
LETTER RULINGS

STATUTES

OPEN GOVERNMENT – OTHER PIA RULES

Redacting Public Information Rules and Forms

A governmental body that wishes to redact information from data or documents it is releasing to the public must generally seek the decision of the attorney general.

A governmental body need not request an attorney general decision if it is relying on a [previous determination](#) to redact information. For more information about previous determinations, please see [Open Records Decision No. 673 \(2001\)](#) and pages 35-38 of the [2014 Public Information Handbook](#).

A governmental body need not request an attorney general decision if it is redacting information pursuant to one of the five sections of the Public Information Act that give a governmental body explicit permission to redact information without requesting an attorney general decision. Those five sections are 552.024, 552.130, 552.136, 552.138 and 552.1175. The Rules and Forms applicable to redaction under those sections of the Public Information Act are provided below.

Rules

- Texas Administrative Code, Title 1, Chapter 63, Public Information Subchapter B, Review of Public Information Redactions

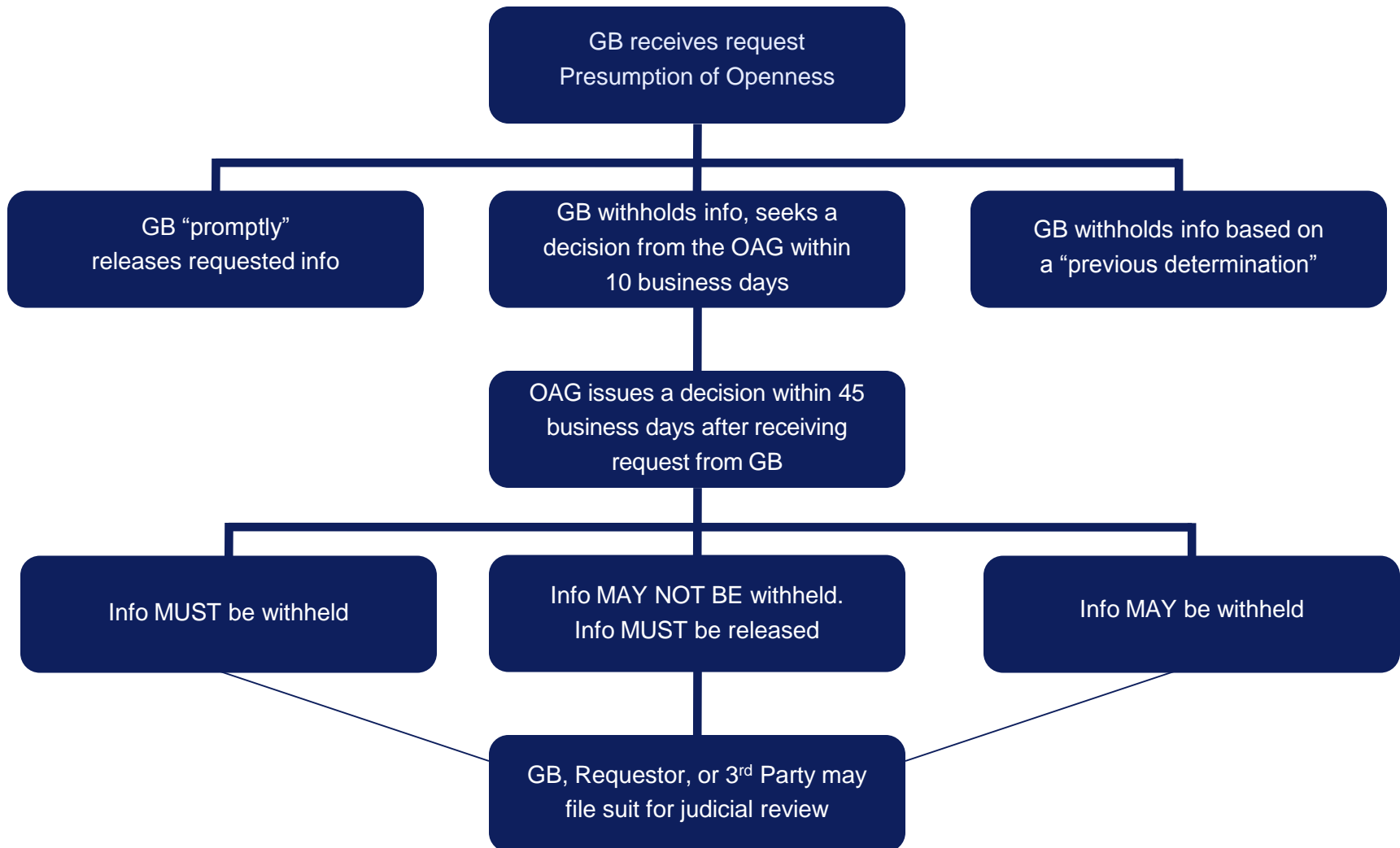
Forms

The following documents are provided in MS Word.

- Form Letter for Section 552.024 (public employee's personal information held by governmental body in its capacity as employer)
- (Effective 05/18/2013) Form Letter for Section 552.130 (motor vehicle records)
- Form Letter for Section 552.136 (account and access device numbers)
- (Effective 06/14/2013) Form Letter for Section 552.138 (family violence shelter center, victims of trafficking shelter center, or sexual assault program)
- (Effective 09/01/2014) Form Letter for Section 552.1175 (public employee's personal information held by governmental body in non-employment capacity)



Basic Process for Governmental Bodies





After Requesting a Ruling from the OAG

- ▶ The Attorney General's Office will issue an informal letter ruling in response to the governmental body's request for a ruling.
- ▶ Rulings are issued within 45 business-days unless the Attorney General extends the deadline, in which case the ruling will be issued within 55 business-days.
- ▶ The Attorney General will issue the ruling to the governmental body, will return the records at issue to the governmental body, and will provide a copy of the ruling to the requestor.
- ▶ All rulings are available for review on the Attorney General's Open Government webpage.



Challenging a Ruling

- ▶ Requests for reconsideration are prohibited.
- ▶ If a governmental body disagrees with the legal interpretation set forth in a ruling, it may file suit against the OAG in accordance with the PIA.
 - No later than the 30th calendar day after the receipt of OAG decision



Formal Complaints

Gov't Code § 552.3215

Declaratory Judgment or Injunctive Relief

- ▶ Complaint filed by requestor with district attorney or county attorney in county where governmental body is located
 - Local governmental bodies: district attorney or county attorney for the county may bring action only in district court for that county where the governmental body is located
 - State agencies: Travis County District Attorney or OAG may bring action only in district court in Travis County



Writ of Mandamus

Gov't Code § 552.321 Writ of Mandamus

- ▶ Used to compel a GB to make information available for public inspection
- ▶ Filed by requestor or Attorney General
- ▶ Examples of potential mandamus situations
 - GB refuses to provide copies or access to information that is clearly public.
 - GB refuses to request an OAG ruling.
 - GB refuses to release information as required by an unchallenged AG ruling.



Failure or Refusal to Provide Access or Copying

Gov't Code § 552.353(a), (e)-(f)

Failure or Refusal of Officer for Public Information to Provide Access to or Copying of Public Information

- ▶ Fails or refuses to give access, permit copying, or provide copies of public information with criminal negligence
- ▶ Fine not more than \$1,000 and/or county jail for not more than six months
- ▶ Misdemeanor Offense
- ▶ Constitutes official misconduct



Affirmative Defense for Failure to Provide Access

Gov't Code § 552.353(b)-(d)

- ▶ Affirmative defense against prosecution
 - Reasonable belief that public access to information not required and relied on
 - court order
 - court opinion, or
 - OAG decision
 - OAG decision sought and no decision issued
 - Suit filed in Travis County challenging OAG decision and suit pending
 - Officer's agent reasonably relied upon written instruction from the officer of public information



Destruction, Removal, or Alteration of Public Information

Gov't Code § 552.351

Destruction, Removal, or Alteration of Public Information

- ▶ A person commits an offense if the person wilfully destroys, mutilates, removes without permission as provided by this chapter, or alters public information.
- ▶ Fine not less than \$25 or more than \$4,000 and/or county jail not less than three days or more than three months
- ▶ Misdemeanor offense



Distribution or Misuse of Confidential Information

Gov't Code § 552.352(a)

Distribution or Misuse of Confidential Information

- ▶ A person commits an offense if the person distributes information considered confidential under the terms of chapter 552 of the Government Code
- ▶ Fine not more than \$1,000 and/or county jail for not more than six months
- ▶ Constitutes official misconduct



Public Information Cost Estimate Model

<https://www.texasattorneygeneral.gov/og/public-information-cost-estimate-model>

Public Information Cost Estimate Model

This model will calculate costs associated with a request for **COPIES** of information, but not a request to **INSPECT** information. For questions about estimating costs when a requestor asks to **INSPECT** information, please call our toll-free Cost Hotline at 1-888-OR COSTS (1-888-672-6787).

Government Body's Information	Requestor's Information
Agency Name: <input type="text"/>	Date request was received: <input type="text" value="02/02/2015"/>
Contact Name: <input type="text"/>	<input type="radio"/> Mr. <input type="radio"/> Ms.
Address: <input type="text"/>	First/Last Name: <input type="text"/>
City: <input type="text"/>	Address: <input type="text"/>
State/Zip: <input type="text"/>	City: <input type="text"/>
	State/Zip: <input type="text"/>

Itemization of costs:

Did the requestor ask for standard paper copies? Yes ☐ | No ☒

Did the requestor ask for copies of nonstandard documents (e.g., oversized paper, DVD, or VHS tape)? Yes ☐ | No ☒

Add labor costs? Yes ☐ | No ☒

Are overhead charges applicable? Yes ☐ | No ☒

Are computer resource charges applicable? Yes ☐ | No ☒

Are remote document retrieval charges applicable? Yes ☐ | No ☒

Will there be charges for miscellaneous supplies? Yes ☐ | No ☒

Will there be postage? Yes ☐ | No ☒

If the total charges exceed \$100, will you require a prepayment deposit? Yes ☐ | No ☒

OR

If the total charges exceed \$100, will you require a prepayment bond? Yes ☐ | No ☒



Questions?

OAG's Open Government Hotline

(877) OPEN TEX

(512) 478-6736

Cost Questions

OAG Cost Rules Administrator

(888) OR-COSTS

(512) 475-2497

OAG website

<http://www.texasattorneygeneral.gov>